

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5098 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SURESH RAMTIRATH YADAV

Versus

COMMISSIONER OF POLICE

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Appearance:

MS SUBHADRA G PATEL, learned Advocate for the Petitioner  
MR UR BHATT, learned AGP for the respondents.

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 30/07/96

ORAL JUDGEMENT

Petitioner Suresh Ramtirth Yadav , by way of this petition under Article 226 of the Constitution of India, has challenged the order of detention dated 20-10-95 passed by the Commissioner of Police, Ahmedabad , under section 3 (1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ( hereinafter referred to as " the said Act" ).

The detaining authority has placed reliance on the three prohibition cases registered against the detenu, which are at the investigation stage, and the statements of four witnesses for the alleged incidents of 10-10-1995 and 14-10-1995 in which allegations are made that the witnesses were beaten because they refused to allow the detenu to store the illicit liquor as also on the ground that they were the informants of the police. It is alleged that because of such beating, people gathered there and an atmosphere of terror and fear was created. The detaining authority has recorded a finding that the detenu is a "bootlegger" within the meaning of section 2 (b) of the said Act and a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against him and, therefore, the impugned order is passed, which is under challenge in the present petition.

This petition is capable of being disposed of on the first contention advanced by Ms Patel. Therefore, it is not necessary to refer to and deal with the other contentions advanced by him. She contended that the cases registered against the detenu are all prohibition cases and yet to be proved against the detenu. Assuming that the allegations made in the grounds of detention are true, in that event also, at the most the detenu can be held responsible for committing breach of the law and order and under no circumstances he can be held responsible for the breach of public order. Under the circumstances, the subjective satisfaction arrived at by the detaining authority that with a view to maintaining public order the detention of the detenu is necessary is not genuine and, therefore, the impugned order of detention is illegal and void.

I find considerable substance in the submission of Ms Patel. All the cases registered against the detenu are prohibition cases. Therefore, there is no question of the breach of maintenance of public order. Even, considering the statements of the witnesses relied upon by the detaining authority, in my opinion, they are vague and general and, therefore, in absence of any cogent material against the detenu, the subjective satisfaction arrived at by the detaining authority for the purpose of passing the order of detention against the detenu is not genuine.

In the result, this petition is allowed. The

impugned order of detention dated 20-10-95 is quashed and set aside. The detenu Suresh Ramtirath Yadav is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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